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No. 91-796

Supreme Court, U.S.
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In The

# Supreme Court of the United States

October Term, 1991

NELL A. CAMMACK, *et al.*,

*Petitioners,*

vs.

JOHN WAIHEE, *Governor of Hawaii, et al.*,

*Respondents.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit**

## GOVERNMENT RESPONDENTS' BRIEF IN OPPOSITION

RONALD B. MUN*
Corporation Counsel
City and County of Honolulu
KARL K. ICHIDA
Deputy Corporation Counsel
City and County of Honolulu
Honolulu Hale
Honolulu, Hawaii 96813
(808) 523-4832
*Counsel for Respondents Mayor, Managing Director, and Director of Civil Service, City and County of Honolulu ("City and County Respondents")*

**Counsel of Record for City and County Respondents*

WARREN PRICE, III
Attorney General
State of Hawaii
STEVEN S. MICHAELS**
Deputy Attorney General
State of Hawaii
425 Queen Street
Honolulu, Hawaii 96813
(808) 586-1365
*Counsel for Respondents Governor of Hawaii and Director of Personal Services, State of Hawaii ("State of Hawaii Respondents")*

***Counsel of Record for State of Hawaii Respondents*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

## QUESTIONS PRESENTED

1. Whether any Petitioner has Article III or prudential standing to challenge Hawaii's adoption of Good Friday as a "state holiday" or, if so, whether standing, if any, exists only to attack payment of holiday pay and other benefits under collective bargaining agreements making Good Friday a holiday independent of any statute adopting Good Friday as a holiday?

2. Whether, to the extent standing exists, Hawaii's Good Friday holiday is sustainable without resort to the purpose or effects prongs of *Lemon v. Kurtzman*, 403 U.S. 602 (1971), in light of the history of public adjournments on Good Friday, and the rationale of *Marsh v. Chambers*, 463 U.S. 783 (1983)?

3. Whether, in the face of the consistent decisions of the District Court and the Court of Appeals upholding Hawaii's Good Friday holiday as properly motivated by secular purposes, it would be appropriate for this Court to rule that the purpose prong of the *Lemon* test for Establishment Clause challenges has been violated, and, therefore, the holiday is unconstitutional?

4. Whether, despite the availability of the Friday before Easter as a full, uniform day of rest for all public workers in Hawaii, regardless of their religious beliefs, and the neutral availability of any other public dispensations on Good Friday (i.e., tolling of court and other deadlines), it would be proper for this Court to strike down Hawaii's Good Friday holiday on the ground that

## QUESTIONS PRESENTED – Continued

the holiday wrongly advances religion in violation of the "effects" prong of this Court's *Lemon* test?*

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* Should certiorari be granted, the Government Respondents would pose four additional questions for review by the Court.

5. Whether the notice of appeal here is insufficient, in light of *Torres v. Oakland Scavenger Co.*, 487 U.S. 312 (1988), to have conferred authority on the court of appeals to rule on claims by petitioners Lucas, Root, Stapleton, and Wallace, and, if so, whether the control exercised by petitioner Cammack over the litigation by her co-petitioners renders her in privity with these parties and her claim here barred by res judicata?

6. Whether, before reaching the merits of Petitioners' claims, this Court should first certify questions to the Supreme Court of Hawaii under its Appellate Rule 13 requesting answers as to whether Hawaii's Good Friday holiday, including provisions of collective bargaining agreements making Good Friday a paid holiday, are invalid in light of the Hawaii Constitution, or Chapter 89, Haw. Rev. Stat. (1985), governing public employment?

7. Whether, if the summary judgments entered in favor of Respondents should not be affirmed, this Court should nonetheless refuse to direct a judgment for Petitioners in light of the existence of issues of material fact and the number of persons and complexity of contractual arrangements that are affected?

8. Whether, if application of *Lemon*'s purpose and effects analyses leave a substantial question here, this case should be the vehicle for overruling or clarifying *Lemon*?

## PARTIES BEFORE THIS COURT

The Government Respondents are all named defendants in the District Court and officials of the State of Hawaii or the City and County of Honolulu who are sued in their official capacities only. As named in the District Court, the Government Respondents include: John Waihee, Governor, State of Hawaii, Alfred Lardizabal, Director of Personnel Services, State of Hawaii, Frank F. Fasi, Mayor, City and County of Honolulu, Jeremy Harris, Managing Director, City and County of Honolulu, and Loretta K. Fukuda, Director of Civil Service, City and County of Honolulu. In 1991, Mr. Lardizabal left government service and has been succeeded by Sharon Y. Miyashiro. In 1991, Ms. Fukuda also retired and was succeeded by Mr. James T. Sato.

The private Respondents in this case are the five public employee unions which maintain collective bargaining agreements under Chapter 89, Haw. Rev. Stat., with the State of Hawaii or the City and County of Honolulu, or both. All were named as defendants in the District Court, and include: Hawaii Government Employees' Association, Local 152, AFSCME; the Hawaii State Teachers Association; the University of Hawaii Professional Assembly; the Hawaii Fire Fighters Association, Local 1463, IAFF; and the State of Hawaii Organization of Police Officers.

**PARTIES BEFORE THIS COURT** – Continued

Petitioners Nell A. Cammack, Genie Lucas, Douglas Paul Root, Carolyn L. Stapleton, and Michele Wallace, at the time the complaint was filed, were residents of the State of Hawaii, and taxpayers of the state of Hawaii and of the City and County of Honolulu. At the time suit was commenced, Petitioner Cammack was an employee of the Department of Transportation, State of Hawaii; Petitioners Stapleton and Wallace were students at the William S. Richardson School of Law at the University of Hawaii at Manoa, on the Island of Oahu; Petitioner Root was an untenured faculty member at the University of Hawaii at Manoa; and Petitioner Lucas was a teacher at a private sectarian elementary and high school on the Island of Oahu. The present residence and occupation of each Petitioner is not presently stated in the petition for certiorari, or elsewhere in the record. The Government respondents do not dispute that Petitioner Cammack remains employed by the Hawaii Department of Transportation, and that Petitioner Stapleton is employed by the City & County.

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**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit**

## GOVERNMENT RESPONDENTS' BRIEF IN OPPOSITION

Respondents Governor of Hawaii, Director of Personnel Services, State of Hawaii, and the Mayor, Managing Director, and Director of Civil Service of the City and County of Honolulu (hereinafter "Government Respondents"), pray that the petition for review of the judgment of the United States Court of Appeals for the Ninth Circuit, entered April 30, 1991, be denied.

## JURISDICTION

The judgment of the court of appeals was entered April 30, 1991, and a petition for rehearing and suggestion

for rehearing *en banc* was denied August 13, 1991. Jurisdiction in this Court is invoked pursuant to 28 U.S.C. § 1254(1). Jurisdiction in the court of appeals was invoked pursuant to 28 U.S.C. § 1291, and the sufficiency of the notice of appeal (Resp. App. "A") is briefed *infra* pp. 15-16. Jurisdiction in the district court was alleged under 28 U.S.C. §§ 1331 and 1343, and the issue of Petitioners' standing in that court is briefed *infra* pp. 16-19.

## CONSTITUTIONAL PROVISIONS, STATUTES, RULES, ORDERS AND CONTRACTS INVOLVED

The First Amendment to the Constitution provides in part that

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

The Fourteenth Amendment to the Constitution provides in part that

> No state shall . . . deprive any person of life, liberty, or property, without due process of law[.]

The Act of June 13, 1896, ch. 66, § 1, Laws of the Republic of Hawaii 247; the Act of April 28, 1903, ch. 55, § 1, 1903 Haw. Sess. L. 278; the Act of March 23, 1915, ch. 20, § 1, 1915 Haw. Sess. L. 19-20; the Act of April 8, 1919, ch. 54, § 1, 1919 Haw. Sess. L. 64; and the Act of April 30, 1941, ch. 1, § 1, 1941 Haw. Sess. L. 1-2, are printed in the attached appendix "B." Haw. Rev. Stat. § 8-1 in its present form is reprinted in Pet. App. 122. Relevant and representative parts of the collective bargaining agreements at issue are printed in appendix "C." Statutes of California,

Connecticut, Delaware, Florida, Indiana, Louisiana, Maryland, New Jersey, New Mexico, North Carolina, North Dakota, Tennessee, and Wisconsin, recognizing a Good Friday holiday are referenced at Pet. App. 11 n.2.[1] The First Congress's orders recognizing Good Friday are reported at 1 *Annals of Congress* 17 (April 10, 1789 (Senate)); *id.* at 116 (April 10, 1789 (House)); *id.* 961 (April 2, 1790 (Senate)); *id.* 1519 (April 2, 1790 (House)). Parts of Hawaii's public employment laws, Haw. Rev. Stat. Chs. 78-89, which are most relevant to the disposition of the petition are printed in appendix "D."

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[1] A survey by the Department of the Attorney General, State of Hawaii, has determined that, of the largest 100 cities in the United States, twenty-five, including Honolulu, appear to observe or to have recently observed Good Friday pursuant to local ordinance, or collective bargaining agreement irrespective of state statute. These cities include: Chicago, Illinois; Philadelphia, Pennsylvania; Baltimore, Maryland; Indianapolis, Indiana; Memphis, Tennessee; New Orleans, Louisiana; Milwaukee, Wisconsin; Cleveland, Ohio; Pittsburgh, Pennsylvania; Minneapolis, Minnesota; Buffalo, New York; Birmingham, Alabama; Arlington, Texas; Baton Rouge, Louisiana; Rochester, New York; Shreveport, Louisiana; Lubbock, Texas; Greensboro, North Carolina; Madison, Wisconsin; Knoxville, Tennessee; Raleigh, North Carolina; Fort Wayne, Indiana; Dayton, Ohio; and Chattanooga, Tennessee. The collective bargaining agreements and ordinances supporting this factual statement do not appear in the record, but will be made available to the Petitioners for their inspection, or to the Court should it so request. Should certiorari be granted, Respondents would ask the court to take judicial notice of these materials, and would lodge appropriate copies of these materials with the Court.

## STATEMENT OF THE CASE

This case arises out of arrangements in the Territory, and now State of Hawaii, whereby public workers have been granted a holiday the Friday before Easter, known commonly as Good Friday.

This practice, by which workers are given a day off or overtime, some government buildings are closed, and some services reduced, is unaccompanied by any expectation, threat, or suggestion that any one need use the day off to attend services. No religious symbols are placed on public property. No prayers or services in observance of Good Friday are sponsored by the State. Theaters, discotheques, stores, restaurants, and bars – from Kauai to Kona – remain open without sanction. Indeed, since at least 1972 the holiday has been the result not of the 1941 statute which first "set aside" Good Friday as a holiday, but of collective bargaining agreements with Hawaii's public labor unions. The contracts cover two thirds of the public work force, mandate a holiday irrespective of state law, and, accordingly to the undisputed facts, "[a]s a practical matter," dictate "similar holidays for employees not covered by the bargaining agreements."[2] In November of 1987, the federal district court held on these facts that the Constitution does not force the State and its municipalities to call off the three-day Easter weekend. In 1991, the Ninth Circuit affirmed. The issue here is whether these rulings should be overturned.

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[2] Aff. of Kazuo ("Lefty") Yamamoto, Chief, Labor Relations Division, Dep't of Personnel Services, at ¶ 12 (C.R. 29 at 13).

**A. The Practice of Adjournment on Good Friday.**

As shown by Justice Frankfurter's scholarly concurrence in *McGowan v. Maryland*, 366 U.S. 420, 459 (1961), public adjournments on Good Friday trace back at least to the statute of Henry VI mandating that "all fairs and markets should cease to show forth goods or merchandise on Sundays, Good Friday, and the principal feast days." *Id.* at 471 (quoting 27 Henry VI, ch.5). Good Friday, like Sunday and Christmas, thereafter became "a part of the [secular] life of the English people." *Id.* at 477; *see Vohlers v. E.H. Stafford Mfg. Co.*, 171 Mich. 8, 137 N.W. 127, 129 (1912) (dictum) (quoting cases and rule for tolling of court deadlines on Christmas, Sunday, Good Friday).

In the First Congress, when the First Amendment was under debate, the Founders likewise took a leave on Good Friday. There was no protest. In the first session, after the votes for President were counted, the Senate met on April 7, 1789, "to take under consideration the manner of electing Chaplains," 1 *Annals of Cong.* 17, 18 (1834 ed.). Similar action was taken by the House three days later. *See Marsh v. Chambers*, 463 U.S. 783, 788 (1983). Both houses adjourned the next day, Good Friday. 1 *Annals of Cong.* 18 (Senate); *id.* at 116 (House). In 1790, despite rancor over earlier resolutions urging a day "of public . . . prayer" upon the submission of the Bill of Rights to the States, *id.* at 914, 915, there was no protest when, as the First Amendment was being considered by the States, the Senate took leave on April 2, and, in the House, as stated in its journal, it "Being Good Friday, the members adjourned without doing any business." *Id.* at 1519. Congress has continued to recognize Good Friday (*see* 133 Cong. Rec. S18600 (Dec. 21, 1987) (remarks of Sen. Byrd);

134 Cong. Rec. S3147 (Mar. 28, 1988) (same)), and at least a dozen other States formally recognize Good Friday by statute or judicial decision. *See* Pet. App. 11 n.2. Numerous localities recognize Good Friday by bargaining agreement or ordinance. *Supra* note 1; *See also Franks v. Niles*, 30 Empl. Prac. Dec. ¶ 33,297 (N.D. Ohio 1982); *Americans United for Separation of Church and State v. County of Kent*, 97 Mich. App. 72, 293 N.W. 2d 723 (1983); *California School Employment Ass'n v. Sequoia Union High School*, 67 Cal. App. 3d 157, 136 Cal. Rptr. 594 (1977).

**B. Hawaii's Good Friday Holiday**

The codification of Good Friday in Hawaii fits within the recognitions of Good Friday by other jurisdictions, which appear on their face to be without sectarian purpose. Indeed, Good Friday was adopted in the then-Territory of Hawaii more than fifty years ago as a result of the conflict between management and labor in the plantation economy that characterized Hawaii at the time.

The battle for more holidays in Hawaii began in the 1920s. The first holiday statute in Hawaii, Act of June 13, 1896, ch. 66, § 1, Laws of the Republic of Hawaii 247, recognized New Year's day, July 4th, Thanksgiving (November 28), and Christmas (December 25), as well as January 17 (the day the monarchy was toppled), June 11 (King Kamehameha's birthday), and the third Saturday in September. After annexation in 1898, January 17 was deleted, and Washington's birthday, Memorial Day (May 30) and Labor Day (September 1) were added, *see* the Act of April 28, 1903, ch. 55, § 1, 1915 Haw. Sess. L. 278. The Act of March 23, 1915, ch. 20, § 1, 1915 Haw. Sess. L.

19-20, added primary and general elections days, and, by the Act of April 8, 1919, ch. 54, § 1, 1919 Haw. Sess. L. 64, the Legislature added Armistice Day, then known as "Victory Day." At that time, and until the Legislature acted in 1941, Hawaii had no holidays between Washington's birthday (February 22) and Memorial Day (May 30), a gap of 97 days (98 days in leap years), far longer than any other gap in the schedule. *See* 676 F. Supp. at 1534.

Debates in the 1920s and 30s over adopting a Good Friday holiday revolved about the economics of doing so. In 1929, the Senate rejected a bill "to have Good Friday declared a legal holiday" because it "believe[d] that there are already enough legal holidays." Haw. Sen. Stand. Comm. Rep. No. 225-29, *reprinted in* 1929 Haw. Sen. J. 727. In 1931, the Senate again "s[aw] no good reason for adding to the number of Territorial holidays." Haw. Sen. Stand. Comm. Rep. 239-31, *reprinted in* 1931 Haw. Sen. J. 803; *see also* 1937 Haw. H.J. 2359.

In 1939, the Legislature passed a bill that, if enacted, would have "ma[d]e Good Friday a holiday." Haw. Sen. Stand. Comm. Rep. No. 282, *reprinted in* 1939 Haw. Sen. J. 1063. The accompanving House committee report makes clear, however, that legislators were not as concerned with promotion of religion so much as assuring a Good Friday holiday made economic sense.

> *There are now ten legal holidays in the Territory,* including Thanksgiving, plus primary and general election days. Public sentiment is divided on the advisability of creating Good Friday a legal holiday. *Some feel that we already have too many holidays to the detriment of both private and public business.* On the other hand, *others feel* equally strongly that Good Friday being *in theory* at least a day of solemn religious observance

> by the members of the various churches and religious denominations should be given legal sanction. More and more churches are now conducting the three-hour service on that day and *many business houses are allowing their employees to take time off* for this purpose. If the legislature should feel that we should have more legal holidays than we now have, it would seem that in view of the religious significance of Good Friday *observance of this day would have as much justification as Thanksgiving or Christmas.*

1939 H. Stand. Comm. Rep. No. 254-39, *reprinted in* 1939 Haw. H.J. 890 (emphasis added). In context, the committee's reference to church-going was intended to blunt business claims that this was a holiday the public could not afford, for if businesses survived in the private sector by taking off Good Friday, it would not hurt the public fisc unduly to follow suit. Indeed, such statements well express concern over the government's ability to retain its workforce (or function well) if more attractive holiday schedules were available in the private sector. Likewise, the committee's remarks reflect appreciation of the fact that adopting the business policy of granting some time off would dampen upward pressure on private labor demands that come in the wake of extending holiday benefits to public employees. Characterizing Good Friday as akin to long-accepted holidays, the committee thus emphasized that a Good Friday holiday would have "as much" justification as Christmas day.

Indeed, opponents of the 1939 bill fought the measure solely on economic grounds. Established business interests believed that most public workers would *not* attend services, and would go shopping to the detriment

of those businesses that would not be open on Good Friday. As the Chamber of Commerce said, "[t]his addition of another legal holiday each year would be satisfactory to our body, if it were felt that all merchants of the city would close, but as we have seen from experience on other legal holidays, this would definitely not be the case." Letter from John A. Hamilton, Chamber of Commerce of Honolulu, to Governor Joseph B. Poindexter dated April 24, 1939, Clerk's Record ("C.R.") 47. The Governor vetoed the measure, stating "I see no reason for adding to [the holidays] which we now have." Governor's Veto Message dated May 2, 1939, C.R. 47.

In the 1941 session, the matter was taken up again, and concerns focused even more clearly on economic impact. The House added Lincoln's birthday and good Friday, *see* 1941 Haw. H.J. 260; Haw. H. Stand. Comm. Rep. No. 179-41, *reprinted in* 1941 Haw. H.J. 899, a plan that the Senate rejected on the ground that, "inasmuch as Washington's Birthday is a legal holiday and falls within the short month of February, to have another holiday within that month would be inadvisable." Haw. Sen. Stand. Comm. Rep. No. 296-41, *reprinted in* 1941 Haw. Sen. J. 719. This view, over a dissent, fell in conference to the House position that more, not fewer, holidays were needed. Haw. Conf. Comm. Rep. No. 2-41, *reprinted in* 1941 Haw. Sen. J. 875. But, indeed, even the Senate view was that Good Friday was "advisable" because there was no "other holiday" nearby. The Governor, echoing his 1939 message, refused to endorse the bill, stating "the holidays were getting a bit thick about that time of year." *Honolulu Star-Bulletin* at 1, June 7, 1941 (C.R. 47 at 4). The bill thus became law without his signature.

Section 8-1, Haw. Rev. Stat., and its predecessors, on their face say nothing about what it means for days to be "set apart and established as state holidays," and, prior to 1971, the working conditions of the State's civil service and exempted personnel were governed by a series of statutes and executive orders. Haw. Rev. Stat. ch. 76-88.[3] With the advent of public employee collective bargaining in 1970, this changed.

Under Haw. Rev. Stat. § 89-9, public employers and exclusive representatives (unions) are under a duty to "meet at reasonable times," "and shall negotiate in good faith with respect to wages, hours, . . . and other terms and conditions of employment[.]" Unions, because of their exclusive bargaining rights, must represent the interests of all employees in the unit "without discrimination" and "without regard to employee organization membership." *Id.* §§ 89-2, 89-8(a).

The thirteen collective bargaining units have thus freely chosen with their employers to designate Good Friday as a holiday under the collective bargaining agreements. The undisputed testimony below is that "no religious leaders or officials participate in or encourage, or are contacted by the bargaining teams in connection with the inclusion of the Friday before Easter as a holiday in the collective bargaining agreements" and the purpose of including Good Friday "has never . . . [been] to facilitate religious worship or any single faith." Aff. of Kazuo

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[3] *See, e.g.*, Haw. Rev. Stat. § 80-1 (1985) (hours of operation) (no mention of pay or holidays); other than those of Haw. Rev. Stat. § 1-29, which tolls legal deadlines as does Fed. R. App. p. 26, there are no mandated consequences for the private sector on state holidays. *See McGowan*, 366 U.S. at 554.

"Lefty" Yamamoto, Chief, Labor Relations Division, Department of Personal Services, dated July 9, 1987 at ¶ 4 ["Yamamoto Aff."]. Rather, the holiday, which generally maintains Hawaii's present schedule of about one holiday per month, is the most acceptable day off "between Prince Kuhio Day (March 26) and Memorial Day." *Id.* The union contracts thus embody Good Friday as a holiday irrespective of Haw. Rev. Stat. § 8-1. *See* Govt. Resp. App. "C." Even if § 8-1 were repealed, the more than 65 percent of public workers in the State workforce governed by contract would still have Good Friday off (in the Transportation Department, where Ms. Cammack works, the contract covers 96 percent of workers, (Yamamoto Aff. ¶ 7). And, "given the size of the labor force governed by collective bargaining," "inclusion of the Friday before Easter as a holiday in collective bargaining requires similar holidays for employees not covered by the bargaining agreements." *Id.* ¶ 11.

The record evidence, consisting of well over two thousand pages of depositions and exhibits, dispositively shows that, in practice, the Good Friday holiday, in Hawaii, does no more than create a three-day Easter weekend for our public workforce. Indeed, each of the Petitioners admitted the lack of any display of Christian symbology, such as a cross, or message, any public observance of the holiday, or any message or speech recognizing the holiday, or suggesting, in any way, that attendance at services was appropriate, expected, or to be rewarded. As Ms. Lucas aptly agreed, "the only thing that happens is that the state employees don't go to work and for that reason the buildings are closed and locked." Lucas Dep. at 33, lines 12-16 (C.R. 47). Business leaders

presented unrebutted testimony that Good Friday has become a day that consumers use to take their car for service (Declaration of Lex Brodie dated Oct. 14, 1987) (C.R. 63), or run other shopping errands (Declaration of Robert B. Robinson, Chamber of Commerce of Honolulu, dated Oct. 14, 1987) (C.R. 61). In fact, since so many Christians use the day *not* to attend services, most Christian churches in Hawaii hold evening Good Friday services (Stapleton Dep. at 42, 99); *see also* Decl. of Richard Kanayama, State Department of Land and Natural Resources (state parks) (C.R. 47); Letter from Hiram Kamaka, Department of Parks & Recreation, City and County of Honolulu, to Richard Wurdeman dated July 9, 1987 (city parks) (C.R. 23) (all attesting to increased use of public parks).

### C. Proceedings Below.

Petitioners, at the time suit was filed, taxpayers of the City and County of Honolulu and the State of Hawaii, sought a declaration that both Hawaii's statutory codification of Good Friday and the collective bargaining contracts embodying Good Friday as a paid holiday violated the Establishment Clause. *See* C.R. 1. On cross-motions for summary judgment, the district court concluded that § 8-1 was constitutional, and, a fortiori, so were the contracts. *Cammack v. Waihee*, 673 F. Supp. 1524 (D. Haw. 1987). The district court rejected the claims that taxpayer standing was inapt (*id.* at 1527-28), and abstention was called for (*id.* at 1528-29), and upheld the law under *Lemon v. Kurtzman*, 403 U.S. 602 (1971), not reaching the Government parties' claim that dismissal was required as well under *Marsh v. Chambers*, 463 U.S.

783 (1983), in light of the long history of adjournments on Good Friday. Applying *Lemon*'s "purpose" prong, Judge Kay followed *Wallace v. Jaffree*, 472 U.S. 38 (1985), and *Lynch v. Donnelly*, 465 U.S. 668 (1984), holding that a law is not invalid if it is only " 'motivated in part by a religious purpose,' " 673 F. Supp. at 1531 (quoting *Wallace*), and will survive if it has " 'a' clearly secular purpose" (*id.* at 1535 (quoting *Lynch*)). Section 8-1 survived in light of the abundant record expressing "the legislature's view that the Territory needed 'more' holidays" in the period "during early to mid-Spring," and, in contrast to *Mandel v. Hodges*, 54 Cal. App. 3d 596, 127 Cal. Rptr. 244 (1976), "the fact that the *entire* day, rather than a three hour period which corresponds in length to the traditional religious service, is a legal holiday." 676 F. Supp. at 1534-35 (original emphasis). The court rejected Petitioners' challenge under *Lemon*'s "effects" prong, finding that, on undisputed evidence, that Good Friday has become "a traditional shopping day in Hawaii," and that, "because of the enactment of the Good Friday statute which creates a 'three day weekend' for many Hawaiians" "Hawaii's population is better poised to take advantage of the state's unique recreational opportunities." *Id.* at 1536. Acknowledging that it is just as likely that granting a uniform day of rest "for all [public] employees, regardless of their individual religious choices," *id.* at 1537, will result in business pressures that diminish daytime church attendance as it is likely that granting Good Friday parishoners time to attend church would increase it, the court found "there is simply no evidence that the enactment of Hawaii Rev. Stat. § 8-1 has advanced Christianity." *Id.* at 1536. Because, the court

held, "whether the people of Hawaii choose to spend the day at the beach or in their churches is an individual choice," *id.* at 1537, "the primary effect of the Good Friday statute is secular in nature." *Id.* The court also rejected Petitioner's "entanglement" claims and entered judgment for Defendants.

On December 4, 1987, three days after judgment entered in the district court, a notice of appeal was filed which used an abbreviated caption that referred only to "Nell A. Cammack, et al.," and stated in the body thereof that "Plaintiffs above-named hereby appeal to the U.S. Court of Appeals for the Ninth Circuit . . . " (C.R. 71; Govt Resp. App. "A"). Three and one half years after appeal was taken, the Ninth Circuit, in a 2-1 vote, affirmed, *Cammack v. Waihee*, 932 F.2d 765 (9th Cir.), finding "that the Hawaii statute has a legitimate, sincere secular purpose, specifically to provide Hawaiians with another holiday" (Pet. App. 38), and that Good Friday's "mere placement on the roll of public holidays" and the granting of "a paid leave day for all employees covered by the collective bargaining agreements" (*id.* at 43) did not generate improper effects.

The court's narrow ruling acknowledged, as the Government Respondents did not dispute, that "[i]f Hawaii went further toward celebrating the religious elements of Good Friday," then substantial Establishment Clause problems might arise (*id.* at 44). However, those improper endorsements were not present here. The full court, dividing 21-6, denied *en banc* review.

## REASONS FOR DENYING THE WRIT

The instant petition is flawed procedurally, mistaken legally, misleading factually, and unpersuasive prudentially. For numerous reasons, this Court's resources should not be deployed to review the validity, under the Establishment Clause, of Hawaii's three-day Easter weekend for its public workers.[4]

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[4] Indeed, the Petition here is puzzling in that it departs from the views of even advocates for the American Civil Liberties Union, who have virtually conceded in this Court that Good Friday holidays, such as those at issue here, present no substantial question. See the colloquy reported from *County of Allegheny v. ACLU*, 57 U.S.L.W. 3564 (U.S. Feb. 28, 1989):

> What do you do about Christmas? What about the federal government declaring Dec. 25 a holiday? [Justice] Scalia asked. That's fine, Litman replied, but you can't go from there to holding the Establishment Clause in abeyance for 45 days.
>
> What if Congress declared Good Friday a federal holiday? [Chief Justice] Rehnquist inquired. That's a harder question, Litman returned, but it might be justified as simply an acknowledgement that many people take that day off anyway.

In addition to this fact, it is dubious that Petitioners even properly appealed to the Ninth Circuit. As we argued below, the Notice of Appeal which purported to confer power on the court of appeals was fatally flawed in light of *Torres v. Oakland Scavenger Co.*, 487 U.S. 312 (1987). Here, as in *Torres*, Petitioners Lucas, Root, Stapleton, and Wallace, are mentioned specifically nowhere in the notice of appeal, and the use of "et al." in the caption of the notice, which was referred to in the notice's body, is insufficient to "provide such notice" as Fed. R. App. P. 3(c) requires. *Id.* at 318. The Ninth Circuit recognized

(Continued on following page)

## I. Petitioners Do Not Have Article III or Prudential Standing, or, if They Have Any Standing, it is Only to Challenge the Collective Bargaining Agreements, The Merits of Which are Not Even Addressed by the Petition; Accordingly, This Court Should Deny the Writ of Review.

This Court, particularly in constitutional cases, has "strictly adhered to the standing requirements to ensure that our deliberations will have the benefit of adversary presentation and a full development of the relevant

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(Continued from previous page)

that its analysis of *Torres* conflicted with the *en banc* decision of the Sixth Circuit in *Minority Employees v. Tennessee Dep't of Employment Security*, 901 F.2d 1327 (6th Cir. 1990), *see* Pet. App. 16, and, in an apparent effort to elude the conflict, held the notice was at least "sufficient to preserve [Petitioner Cammack's] appeal" (*id.* at 17 n.7). This, however, is not so. Aside from the fact that Cammack was mentioned nowhere in the body of the notice, Cammack was in privity with her co-plaintiffs in the trial court as a result of her unique role in organizing the lawsuit, contacting and arranging for counsel, and enlisting the other plaintiffs. *See* Cammack Dep. at 53-55; Wallace Dep. at 60-61. These facts were simply overlooked by the court of appeals, and nullify any Petitioner's right to seek review here. Because Ms. Cammack "control[led] or substantially participate[d] in the control of the presentation on behalf of [her co-plaintiffs,]" *Restatement (Second) of Judgments* § 39 (1982), she ought to have been bound by the district court judgments against her co-plaintiffs. *See, e.g., Montana v. United States*, 440 U.S. 147 (1979). This was simply not the case where a single counsel represented several Plaintiffs, each of whom simply acted to protect their own respective interests. The case was not ever properly "in" the court of appeals for purposes of 28 U.S.C. § 1254, or, to the extent it was, the Petition is still barred by *res judicata*.

facts." *Bender v. Williamsport Area School District*, 475 U.S. 534, 542 (1986). A critical set of reasons why certiorari should be denied is that Petitioners lack Article III and prudential standing to litigate the issues raised in the petition.

First, both courts below, in finding "taxpayer" standing present, overlooked that the taxpayer injuries claimed in this case are not related to powers of state and local governments analogous to those under the taxing and spending powers. *Cf. Grand Rapids School District v. Ball*, 473 U.S. 373, 380 n.5 (1985). " '[E]ven within an unitary court system,' " "the Government has traditionally been granted the widest latitude in the 'dispatch of its own internal affairs.' " *Allen v. Wright*, 468 U.S. 737, 761 (1984). Although it is true that this Court will not find taxpayer standing absent "simply because the funding authorized by [the Legislature] has flowed through and been administered by [the Executive]," *Bowen v. Kendrick*, 487 U.S. 589, 619 (1988), the payments made to public workers are not at their "heart a program of disbursement of funds" to the general public. *Id. See generally Taub v. Commonwealth of Kentucky*, 842 F.2d 912, 919 (6th Cir. 1988); *but cf. Freedom from Religion v. Zielke*, 845 F.2d 1463, 1470 (7th Cir. 1988).

Second, Petitioners' *taxpayer* injury is not attributable to the fact that government businesses are *closed* on Good Friday; rather, the incremental cost of the holiday (overtime and holiday pay for some workers) is paid to keep essential government services *open* on a day the unions have voted to maintain as a holiday. Unlike most taxpayer standing cases challenging general welfare programs whose disbursements allegedly offend the

Establishment Clause, elimination of the challenged incremental public cost (overtime and holiday pay) will *magnify* the allegedly offensive government conduct (closure of government offices) because no employee will be obligated to come in on Good Friday under those circumstances. Thus, at its most basic level, there is no necessary connection between the monies spent and the "good faith pocketbook" injury claimed by Petitioners. *See, e.g., Doremus v. Board of Education*, 342 U.S. 429 (1952).

Third, along these lines, at the very least the connection between the monies spent and any actual concrete injury to the Petitioners is at least as speculative as that found by the four Justice opinion in *ASARCO, Inc. v. Kadish*, 490 U.S. 605 (1989), to be insufficient to support standing as a general matter, at least as to state expenditures. *See* Pet. App. at 20-21 & n.9. Here, as in *ASARCO*, there can be no guarantee that barring of overtime pay for Good Friday work would redound to any Petitioner.

Fourth and most important of all, however, even if none of the above is correct, Petitioners utterly lack *taxpayer* standing to challenge the *statutory* codification of Good Friday, as the effects that are independently traceable to Haw. Rev. Stat. § 8-1 (tolling of court deadlines) do not involve expenditure of *any* public funds. Rather, public funds are spent "on" Good Friday only as a result of the collective bargaining agreements and the collateral consequences of those agreements on uncovered workers. Nowhere does the Petition deal with this fact. Indeed, the Petition nowhere even argues how the Establishment Clause plausibly dictates nullification of the bargaining contracts – agreements that, historically, and logically,

have purposes and effects independent of any state statute. Put another way, nullification of the Hawaii statute would not make relief for Petitioners, as *taxpayers*, " 'likely.' " *Allen*, 468 U.S. at 751 (citing *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 36, 38 (1976)). And, because Petitioners are not in any meaningful sense exposed to "unwelcome religious exercises" (or the like) under the present record of Good Friday adjournment in Hawaii, *see Valley Forge Christian College v. Americans United for Separation of Church & State*, 454 U.S. 464, 487 n. 22 (1982); *Saladin v. City of Milledgeville*, 812 F.2d 687, 692 (11th Cir. 1987), they do not have standing to challenge the existence of a Good Friday holiday apart from any expenditure of funds. Accordingly, at the very least, none of the questions presented are those which Petitioners have standing to raise, and, even if Petitioners had standing to challenge the collective bargaining agreements they simply do not do so in this case. Review should thus be denied.

## II. Review Should Be Denied On the Basis that the Mere Public Adjournment on Good Friday, Which Traces its Pedigree Back to the Origins of this Nation, is Valid Under the Principles of *Marsh v. Chambers*, 463 U.S. 783 (1983), and, Thus, Granting Review Would Not Likely Reach Petitioners' Issues.

While the Petition is devoted entirely to assessing Hawaii law under the "purpose" and "effects" prongs of *Lemon v. Kurtzman*, 403 U.S. 602 (1971), these questions would not necessarily be reached by granting review insofar as the Good Friday holiday is valid in light of

"historical acceptance of the practice" of adjournment on Good Friday. *Edwards v. Aguillard*, 482 U.S. 578, 583 n.4 (citing *Marsh v. Chambers*, 463 U.S. 783 (1983)).

Although the Ninth Circuit held that application of *Marsh* to this case was unwarranted in light of *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573 (1989), and the rejection therein of Justice Kennedy's reading of *Marsh*, *id.* at 602-05, this concern was misplaced, and *Marsh* is squarely applicable. Indeed, the reason *Marsh* requires affirmance without resort to Lemon rests not on the fact that "Hawaii's recognition of Good Friday stems back to its days as a territory," Pet. App. 25, but that the recognition of Good Friday in this Nation finds its origins with the very authors of the First Amendment. See 1 Annals of Cong., 17, 18, 116, 1519 (1834 ed.). *Marsh*, still good law, holds that "historical evidence sheds light not only on what the draftsmen intended the Establishment Clause to mean, but also on how they thought that Clause applied to the practice authorized by the First Congress – their actions reveal their intent." 463 U.S. at 790. Hawaii, having entered the Union last, has done no more than what the Founders did first: adjourn on Good Friday. Saying "a public holiday can affect the entire populace" (Pet. App. 26) does not affect this logic, for closing down the "internal workings" of any branch of Government will have this effect (*id.*). This case is virtually identical to *Marsh*, and, for this reason the Court would not likely reach the Petition's questions presented even if review were granted. Review should thus be denied.

## III. Even if *Lemon v. Kurtzman* Applies to Good Friday Holidays Generally, it Would be Inappropriate to Grant Review to Examine Petitioners' "Purpose" Arguments Under the *Lemon* Test.

Petitioners' lead contentions why review is proper are that the panel majority "failed to follow the analytical approach" of this Court's treatment of the "purpose" prong of *Lemon v. Kurtzman*, and simply "substituted its own versions of legislative intent for the legislature's actual intent" (Pet. 13). Both of these claims are flatly incorrect, and, in any case, are ultimately irrelevant to the precise issue here.

The Petition's challenge to the panel majority's view of the test for improper legislative purpose wrongly belittles the sensitive manner in which the majority resolves the tensions in this Court's pronouncements on this front. Contrary to the Petition, the panel did not ignore "the specific purpose" (Pet. at 10), "the relevant purpose" (Pet. at 12), or "the animating purpose" (Pet. at 13) of the statutory addition of Good Friday. Indeed, the panel agreed that if "only one legislative purpose animates a governmental act, then it is sound to evaluate such 'actual' purpose." Pet. App. 30 n.12. It is simply false that the panel "disregarded this Court's earlier precedents such as *Edwards*," and evidenced a "fundamental misunderstanding of the Establishment Clause" (Pet. at 13). The substantial issue under *Lemon*, which Petitioners have never successfully dealt with, is, assuming, *arguendo*, those who voted for the Good Friday holiday did not uniformly have secular motives, how legislative purpose is to be measured. As the majority rightly holds, *Lemon*

itself provides the answer: "the statute must have *a* secular legislative purpose" (Pet. App. 27). A statute fails the purpose prong "only if it is motivated wholly by an impermissible purpose." *Bowen v. Kendrick*, 487 U.S. 589, 602 (1988).

This reading of *Kendrick* accords with this Court's longstanding rule that that the courts should be "reluctan[t] to attribute unconstitutional motives to the States, particularly when a plausible secular purpose for the State's program may be discerned from the face of the statute." *Mueller v. Allen*, 463 U.S. 388, 395 (1983). While this Court has required " 'that the legislature manifest a secular purpose,' " *Edwards*, 482 U.S. at 587, there has never been a mandate that legislators agree on, and publish, a statement of "actual purpose" for laws to pass muster. Petitioners, however, would require just that.

The Good Friday holiday in Hawaii survives the purpose prong, properly conceived. Indeed, the holiday survives well even under Petitioners' own formulation of the test. Petitioners' threshold error, on this front, is in even seeking to plumb the depths of the legislative history when "the face of the statute" manifests "a plausible secular purpose." *Mueller, supra*. There is simply no doubt that, as of 1941, when Good Friday was added as a holiday, the longest gap in the holiday schedule (97 days (98 in leap years)) occurred between Washington's Birthday and Memorial Day. *See* 673 F. Supp. at 1534. Adding the Friday before Easter weekend evidences, on the "face of the statute" the secular intent to facilitate the sort of family gatherings and festive activities associated with Easter.

While it may be that "[t]he holly and the ivy . . . this is not," Pet. App. 50 (Nelson, J., dissenting), this simply does not matter for this Court's purposes. The Petition agrees "secularized" holidays such as Christmas can be recognized (*see* Pet. at 14 n.21, 16), yet, as a device to facilitate the avowedly secular rites of Spring associated with Easter, the Good Friday holiday meets, and overcomes, Petitioners' claims on their own terms. As we have maintained, "to have a three-day Easter Weekend that culminated on Easter Sunday, one must make Good Friday a holiday" (Gov't Ans. Br. at 42, 43 (9th Cir. July 28, 1988)). Petitioners admit a State may facilitate celebration of a " 'holiday's secular aspects' " (Pet. at 16), and the Good Friday holiday, on its face, has such a secular basis, and, on its face, "further[s] this purpose." *Edwards*, 482 U.S. at 586. This secular purpose "is sincere and not a sham." *Id.* at 587. Unlike *Wallace v. Jaffree*, 472 U.S. 38, 59 (1985), no "previously adopted [Hawaii] law already provided for such a [spring holiday]." *Edwards*, 482 U.S. at 588.

Indeed, the legislative history, properly read, confirms the secular purpose of the holiday. The record is clear that, during the entire history of debate over Good Friday's addition to the list of statutory holidays, the terms of the controversy were framed by the pros and cons of adding to the public cost. *See* Pet. App. 31-35. As the majority correctly concludes, the "fair reading" of the 1939 House report on which Petitioners dwell (*see* Pet. at 4-5, 12-13) demonstrates that the primary purpose of the 1939 bill was not only "to have more legal holidays," Pet. App. 34, but to do so in a way that would minimize overall cost. Thus, because "[m]ore and more churches

are now conducting the three-hour service on that day and many business houses are allowing their employees to take time off for this purpose," *id.* at 33, the granting of a holiday on Good Friday would save costs on a variety of fronts. It would minimize the relative disruption to the government, which would get little work done with the private sector largely closed. It would also efficiently dampen wage demands by public workers, who would enjoy the ability to associate with family and acquaintances in the private sector who were similarly dismissed. It is in this context that the Report's language must be read.

Far from implying that secular concerns were mere "ancillary secular objectives" (Pet. at 11), the 1939 Report sought to locate Good Friday within the category of holidays such as Thanksgiving and Christmas, which derive much of their economic import precisely from the fact that they have a "religious significance" to many in society. In this sense, the 1939 Legislature sought to recognize Good Friday "as a cultural phenomenon," *County of Allegheny*, 492 U.S. at 601. When the 1941 Legislature met, this concern was equally present, as the Senate Report shows. *See supra* p. 9. Although the Senate's desire to limit the number of new holidays to as few as possible did not prevail, the purpose of adding Good Friday was not suddenly transformed into an "obersv[ance of] it as a Christian holy day." *County of Allegheny*, 492 U.S. at 601. To the end, the debate over Good Friday was about economics, with the Governor refusing to sign the legislation (but allowing it to become law) because in his view "the holidays were getting a bit thick."

Seen in this light, the Petition's argument that *Lemon's* purpose prong is violated is insubstantial. Even ignoring that the release of the public work force on the Friday before Easter was expected to and can be seen as, facilitating the latter "secularized" holiday (*see* supra p. 9), the Good Friday holiday, as originally enacted, does not evince an improper purpose. Like New York City's annual suspension of alternate-side-of-the-street parking rules during the Jewish High Holy Days, Hawaii's recognition of the social facts of Good Friday do not evince improper sectarian purpose. The Petition's essential argument thus disintegrates into the position that any accommodation not compelled by the Free Exercise Clause is per se invalid under the Establishment Clause. *See* Pet. at 13 n. 20. However, this Court has made clear that this is not the rule, *see County of Allegheny*, 492 U.S. at 573 n. 59, and that the rejection of Free Exercise claims "need not and should not discourage [the Government] from accommodating religious practices." *Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439, 455 (1988). This reasoning, which finds its origins in this century's leading Establishment Clause cases, e.g., *Zorach v. Clausen*, 343 U.S. 30 (1952), has been repeatedly reaffirmed. *See Employment Division v. Smith*, 110 S. Ct. 1595, 1606 (1990).

Moreover, at this stage, it is particularly inappropriate for Petitioners to ask reversal of the lower courts' analysis of Hawaii's purpose in enacting the 1941 law. As Justice White aptly observed in *Edwards*, "if the meaning ascribed to a state statute by a court of appeals is a rational construction of the statute, [this Court] normally accept[s] it," 482 U.S. at 609 (White, J., concurring in the

judgment), and this "usual rule applies in First Amendment cases." *Id.* Although even the most searching review would reveal the Ninth Circuit's judgment to be correct, this added fact makes review particularly inapt.

Indeed, the Petition does not deal at all with the fact that, in Hawaii today, the collective bargaining agreements independently require a Good Friday holiday. Thus, even if the original purpose of the Good Friday statute were improper, that would not be relevant to the real "controversy" here. The Petition makes no argument that the purpose of the bargaining agreements is improper, and collectively bargained Good Friday holidays have been universally upheld. *See supra* p. 6.

## IV. The Petition's Contention that Adoption of a Good Friday Holiday, as in Hawaii, Violates *Lemon's* Proscription on Improper Effect of Advancing Religion Misconstrues The Law and the Record, and Is No Basis for Review.

The Petition's final ground for review, the claim that it is "inescapable" that the Good Friday holiday has impermissible sectarian effects (Pet. at 15-18), could not be more wrong.

First, Petitioners' argument is refuted by this Court's recognition that effects analysis turns on whether "religion was substantially aided." *Id.* Indirect benefits as the "congressional and Executive recognition of the origins of [Christmas] as 'Christ's Mass,' " *Lynch v. Donnelly*, 465 U.S. 668, 683 (1984), are not improper effects. Indeed, unlike numerous laws this Court has upheld, *e.g.*, *McGowan v. Maryland*, 366 U.S. 420 (1961), the holiday

here makes no effort to channel the public into church. *Cf. Mandel v. Hodges*, 54 Cal. App. 3d 596, 127 Cal. Rptr. 244 (1976) (time off corresponding to three-hour service struck down); *Griswold Inn, Inc. v. State*, 183 Conn. 552, 441 A.2d 16 (1981) (bar on Good Friday liquor sales). That the day's title may make "references to religious organizations" is irrelevant so long as the holiday is granted to all neutrally. *Kendrick*, 487 U.S. at 607 & n.11.

Second, the Petition does not overcome the lower courts' conclusion that the "context" of the holiday, free of ceremony, symbol, and Government exhortation confirms compliance with the Establishment Clause. The Petition agrees that a State may recognize a "holiday's secular aspects" (Pet. at 16), but gives no reason why adjournment from public business is not just such a permissible secular "aspect" to recognize.

Third, while the Petition points to other holidays that were not "similarly" acknowledged, this claim was raised below in the context of an "effects" challenge only by a Petition for Rehearing in the court below, plainly too late to counsel review here. Acceptance of Petitioners' argument, moreover, would make Christmas itself plainly unconstitutional.

Fourth, and relatedly, the Petition wrongly accuses the majority of condoning the differential "treatment" of adherents and nonadherents, thus violating " '[t]he clearest command of the Establishment Clause.' " *See* Pet. at 18 (quoting *County of Allegheny*, 492 U.S. at 605). But the decision below is faithful to the rule that legitimate accommodation may not "impact adherents and nonadherents equally." *See* Pet. App. at 42 n.17. The fact that

Christians may derive, to use the economic jargon, "greater marginal utility" from the Good Friday holiday is irrelevant if the holiday is available to all. *See Witters v. Washington Dep't of Services*, 474 U.S. 481, 486-87 (1986).

Petitioners ultimately urge that there must be some "secular celebration" (Pet. at 16), apart from a holiday's status as a day of rest (such as, in the case of Christmas, hanging stockings), for public workers to be released. But this argument does precisely the sort of violence to the values underlying the religion clauses that Petitioners seek to avoid. What makes the statutory holiday on Christmas acceptable is not the fact that Jews or Buddhists feel "comfortable" about decorating a tree, for such patronizing arguments "require [this Court] to rule that some religious adherents misunderstand their own religious beliefs." *Lyng, supra*, 485 U.S. at 457-58. The recognition of the "cultural phenomenon" of a certain religion's holiday (*County of Allegheny*, 492 U.S. at 601), if available to all faiths, leads to benefits to religion that are only "indirect, remote, and incidental." *Lynch*, 465 U.S. at 668. When it is considered that Hawaii's Good Friday holiday is proximately caused by collective bargaining, this is even more true.

Petitioners' "effects" analysis is no basis for review.

**V. Even if the Questions Presented in the Petition Are Jurisdictionally Substantial, the Absence of any Conflict in the Lower Appellate Courts, and the Number of Jurisdictions That May Be Affected by a Precipitous Grant of Review in This Case, Warrants Denial of Review and Further Litigation.**

As the court of appeals recognized, the issue whether Good Friday may be lawfully adopted as a state holiday is an issue of first impression at the federal court of appeals level. Indeed, Petitioners do not assert any inter-circuit conflict or conflict with a decision of a state's highest court. Indeed, the only such decision even arguably in conflict, *Griswold Inn, Inc. v. State,* 183 Conn. 552, 441 A.2d 16 (1981), was tried on stipulated facts not found here, and focuses upon the factually distinct issue of the validity of a *closing* law on Good Friday. No such mandatory closings for the private sector are remotely present in Hawaii's holiday.

Even if, despite the foregoing, the Petition presents any substantial question, the absence of any real conflict below strongly counsels against review, particularly where litigation has not even commenced over the issues here in many potentially affected jurisdictions. If the Petition is at all substantial, review should nonetheless be denied so that the views of at least some of the ten other federal circuits, and state courts, potentially affected could be rendered and assist this Court.

## CONCLUSION

For the foregoing reasons the writ should be denied.

Dated: Honolulu, Hawaii, January 17, 1992.

RONALD B. MUN*
Corporation Counsel
City and County of Honolulu
KARL K. ICHIDA
Deputy Corporation Counsel
City and County of Honolulu
Honolulu Hale
Honolulu, Hawaii 96813
(808) 523-4832
*Counsel for Respondents Mayor, Managing Director, and Director of Civil Service, City and County of Honolulu ("City and County Respondents")*

**Counsel of Record for City and County Respondents*

WARREN PRICE, III
Attorney General
State of Hawaii
STEVEN S. MICHAELS**
Deputy Attorney General
State of Hawaii
425 Queen Street
Honolulu, Hawaii 96813
(808) 586-1365
*Counsel for Respondents Governor of Hawaii and Director of Personal Services, State of Hawaii ("State of Hawaii Respondents")*

***Counsel of Record for State of Hawaii Respondents*

## APPENDIX "A"

KIRK CASHMERE
ACLU of Hawaii
33 S. King St., Suite 412
Honolulu, Hawaii 96813
Telephone: (808) 545-1722

KAREN ESSENE
707 Richards St., PH 3
Honolulu, Hawaii 96813
Telephone: (808) 531-1411

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

| | |
|---|---|
| NELL A. CAMMACK, et al., Plaintiffs, vs. JOHN WAIHEE, et al., Defendants. | CIVIL NO. 87-0260<br>NOTICE OF APPEAL; CERTIFICATE OF SERVICE |

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

DEC 4 1987

at 1 o'clock and 40 min. P.M.
WALTER A. Y. N. CHINN, CLERK

### NOTICE OF APPEAL

Notice is hereby given that Plaintiffs above-named hereby appeal to the U.S. Court of Appeals for the Ninth

Circuit from the final judgment entered in this action on December 1, 1987 by Judge Alan C. Kay in the U.S. District Court for the District of Hawaii pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure.

DATED: Honolulu, Hawaii, December 4, 1987.

/s/ Kirk Cashmere
KIRK CASHMERE
KAREN ESSENE
Attorneys for Plaintiffs

## APPENDIX "B"
## (PART "1")

## ACT 66.

AN ACT RELATING TO HOLIDAYS.

*Be it enacted by the Legislature of the Republic of Hawaii:*

SECTION 1. The following days of each year are hereby set apart and established as national holidays, to wit:

The first and seventeenth days of January, the eleventh day of June, the fourth day of July, the third Saturday of September, the twenty-eighth day of November and the twenty-fifth day of December.

SECTION 2. This Act shall take effect upon publication.

Approved this 13th day of June, A.D. 1896.

SANFORD B. DOLE,
President of the Republic of Hawaii.

## APPENDIX "B"
## (PART "2")

## ACT 55.

AN ACT TO AMEND SECTION 1, ACT 66, OF THE SESSION LAWS OF 1896.

*Be it Enacted by the Legislature of the Territory of Hawaii:*

SECTION 1. Section 1 of Chapter 66, of the Session laws of 1896, is amended to read as follows:

Section 1. The following days of each year are hereby set apart and established as Territorial Holidays, to wit:

The first day of January,

The twenty-second day of February,

The thirtieth day of May,

The eleventh day of June,

The fourth day of July,

The first Monday in September, known as Labor Day,

The third Saturday in September, and

The twenty-fifth day of December.

SECTION 2. This Act shall take effect from and after the date of its approval.

Approved this 28th day of April, 1903.

SANFORD B. DOLE,
Governor of the Territory of Hawaii.

## APPENDIX "B"
## (PART "3")

## ACT 20

## AN ACT

TO AMEND SECTION 137 OF THE REVISED LAWS OF HAWAII OF 1915, RELATING TO HOLIDAYS.

*Be it Enacted by the Legislature of the Territory of Hawaii:*

SECTION 1. Section 137, Chapter 16, of the Revised Laws of Hawaii of 1915, is hereby amended to read as follows:

"Section 137. Designated. The following days of each year are set apart and established as Territorial holidays, to wit:

The first day of January,

The twenty-second day of February,

The thirtieth day of May,

The eleventh day of June,

The fourth day of July,

The first Monday in September, known as Labor Day,

The third Saturday in September, and

The twenty-fifth day of December, and

All election days, both primary as well as general, in such county or city and county wherein such election is held.

And any day designated by proclamation of the President of the United States as a Day of Thanksgiving,

fasting or religious observance, or designated by proclamation of the Governor of the Territory as a holiday, shall be a Territorial holiday."

SECTION 2. This Act shall take effect upon its approval.

Approved this 23rd day of March, A. D. 1915.

LUCIUS E. PINKHAM,
Governor of the Territory of Hawaii.

## APPENDIX "B"
## (PART "4")

## ACT 54

[S. B. No. 11]

AN ACT TO AMEND SECTION 137 OF THE REVISED LAWS OF HAWAII, 1915, AS AMENDED BY ACT 20 OF THE SESSION LAWS OF 1915, RELATING TO HOLIDAYS.

*Be it Enacted by the Legislature of the Territory of Hawaii:*

SECTION 1. Section 137 of the Revised Laws of Hawaii, 1915, as amended by Act 20, Session Laws of 1915, is hereby amended to read as follows:

"Section 137. Designated. The following days of each year are set apart and established as territorial holidays, to wit:

The first day of January,

The twenty-second day of February,

The thirtieth day of May,

The eleventh day of June, to be known as Kamehameha Day,

The fourth of July,

The first Monday in September, known as Labor Day,

The third Saturday in September,

The eleventh day of November, to be known as Victory Day,

The twenty-fifth day of December, and all election days, both primary as well as general, in such county or city and county wherein such election is held;

And any day designated by proclamation of the President of the United States as a day of thanksgiving, fasting or religious observance, or designated by proclamation of the governor of the Territory as a holiday, shall be a territorial holiday."

SECTION 2. This Act shall take effect upon its approval.

Approved this 8th day of April, A. D. 1919.

C. J. McCARTHY,
Governor of the Territory of Hawaii.

## APPENDIX "B"
## (PART "5")

## CHAPTER 1. COMMON LAW AND STATUTES.

### HOLIDAYS.

**[A-1]** An Act to Amend Section 21 of the Revised Laws of Hawaii 1935, Relating to Holidays.

*Be It Enacted by the Legislature of the Territory of Hawaii:*

Section 1. Section 21 of the Revised Laws of Hawaii 1935, is hereby amended to read as follows:

"**Sec. 21. Holidays designated.** The following days of each year are set apart and established as territorial holidays, to wit:

The first day of January,

The twelfth day of February,

The twenty-second day of February,

The Friday preceding Easter Sunday, known as Good Friday,

The thirtieth day of May,

The eleventh day of June, to be known as Kamehameha Day,

The fourth of July,

The first Monday in September, known as Labor Day,

The third Saturday in September,

The eleventh day of November, to be known as Armistice Day,

The twenty-fifth day of December, and all election days, both primary as well as general, in such county or city and county wherein such election is held;

And any day designated by proclamation by the President of the United States as a day of thanksgiving, fasting or religious observance, or designated by proclamation by the governor of the territory as a holiday, shall be a territorial holiday; **provided,** however, that when any of such holidays fall on a Sunday, the same may be, by proclamation of the governor, observed upon the following Monday.

Whenever in the opinion of the governor a public emergency shall exist, and it shall to him seem to be in the public interest, he may by proclamation designate and proclaim as legal banking holidays in the territory such number of consecutive days as in his judgment the emergency may require, with power in him to extend the same as may seem advisable; which proclamation of holidays shall not be taken as relating to any business other than that of banking and kindred operations, nor as prohibiting, perforce, any voluntary conduct of banking business, in whole or in part, except to the extent declared in such proclamation or in any further proclamation in enlargement or modification thereof." [L. 1896, c. 66, s.1; am. L. 1903, c. 55, s. 1; am. L. 1911, c. 167, s. 1; s. 137; am. L. 1915, c. 20, s. 1; am. L. 1919, c. 54, s. 1; am. L. 1923, c. 151, s. 1; am. L. 1933, c. 3, s.1; R. L. 1935, s. 21; am. L. 1941, c. 132, s. 1.]

Section 2. This Act shall take effect upon its approval.

(Became effective April 30, 1941, without the Governor's signature.) H.B. 154, Act 132.

# APPENDIX "C"
# (PART "1")

## UNIT 1

## AGREEMENT

**Between**
**STATE OF HAWAII**
**CITY & COUNTY OF HONOLULU**
**COUNTY OF HAWAII**
**COUNTY OF MAUI**
**COUNTY OF KAUAI**

**and**

**UNITED PUBLIC WORKERS**
**LOCAL 646**
**AMERICAN FEDERATION OF**
**STATE, COUNTY & MUNICIPAL EMPLOYEES,**
**AFL-CIO**

**BLUE COLLAR NON-SUPERVISORY**
**BARGAINING UNIT**

**JULY 1, 1985-JUNE 30, 1987**

THIS AGREEMENT is entered into this 29th day of March, 1985 by and between the STATE OF HAWAII, the CITY AND COUNTY OF HONOLULU, the COUNTY OF HAWAII, the COUNTY OF MAUI, AND THE COUNTY OF KAUAI, hereinafter collectively called the EMPLOYER, and the UNITED PUBLIC WORKERS, LOCAL 646, AMERICAN FEDERATION OF STATE COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, hereinafter called the UNION.

**Section 1. RECOGNITION.**

1.01 The Employer recognizes the Union as the exclusive bargaining representative for those public employees in the blue collar non-supervisory unit.

[MATERIAL DELETED]

Section 35. HOLIDAYS.

35.01 The following days of each year are established as holidays:

| | |
|---|---|
| New Year's Day | -First day of January |
| Presidents' Day | -Third Monday in February |
| Prince Jonah Kuhio Kalanianaole Day | -Twenty-sixth day of March |
| Good Friday | -Friday preceding Easter Sunday |
| Memorial Day | -Last Monday in May |
| King Kamehameha I Day | -Eleventh day of June |
| Independence Day | -Fourth day of July |
| Admission Day | -Third Friday in August |
| Labor Day | -First Monday in September |
| Discoverer's Day | -Second Monday in October |
| Veterans' Day | -Eleventh day of November |
| Thanksgiving Day | -Fourth Thursday in November |
| Christmas Day | -Twenty-fifth day of December |

All election days, except primary and special election days, in the County wherein the election is held.

Any day designated by proclamation by the President of the United States or by the Governor as a holiday.

35.02 Observance of Holidays.

(a) Employees whose workdays fall on Monday through Friday during the workweek

in which a holiday occurs shall observe such holiday as provided below:

| Day Holiday Falls | Day Holiday Observed |
|---|---|
| Saturday | Friday preceding Holiday |
| Sunday | Monday following Holiday |
| Workday | Workday |

(b) Employees whose workdays fall on other than Monday through Friday during the workweek in which a holiday occurs shall observe such holiday as provided below:

| Day Holiday Falls | Day Holiday Observed |
|---|---|
| Day off | First workday after the day off |
| Workday | Workday |

35.03 It shall be the desire of the parties to this Agreement that holiday work assignments be shared equitably among employees in a work unit. To accomplish this a rotational system by seniority will be established whereby every employee within an organizational unit will be given the opportunity to participate in holiday work assignments on an equitable basis insofar as the requirements of the mission will permit and in accordance with skills required. Suitable records must be maintained by supervisors to assure that each employee receives substantially the same consideration.

35.04 Upon request of the Union, the Employer or his representative shall meet and consult with the Union when developing the holiday assignment system.

[MATERIAL DELETED]

## APPENDIX "C"
## (PART "2")

### UNIT 2
### AGREEMENT

This Agreement is made this 19th day of April, 1985, by and between the Hawaii Government Employees' Association, AFSCME, Local 152, AFL-CIO, hereinafter called the Union, and the State of Hawaii including the Board of Education and the Board of Regents of the University of Hawaii, the City and County of Honolulu, the County of Hawaii, the County of Maui, and the County of Kauai, hereinafter called the Employer.

### ARTICLE 1 – RECOGNITION

A. The Employer recognizes the Union as the exclusive bargaining agent of the unit certified by the Hawaii Public Employment Relations Board consisting of all blue-collar supervisory employees employed by the State of Hawaii including the Board of Education and the Board of Regents of the University of Hawaii, the City and County of Honolulu, the County of Hawaii, the County of Maui, and the County of Kauai.

B. The term "Employee" as used in this Agreement refers to Employees in the bargaining unit.

C. Whenever in this Agreement the masculine gender is used, it shall be deemed to include the feminine gender.

[MATERIAL DELETED]

## ARTICLE 33 – HOLIDAYS

A. Legal holidays shall be as provided under Section 8-1, HRS, as amended. Such holidays are:

New Year's Day
President's Day
Prince Jonah Kuhio Kalanianaole Day
Good Friday
Memorial Day
King Kamehameha I Day
Independence Day
Admission Day
Labor Day
Discoverers' Day
Veterans' Day
Thanksgiving Day
Christmas Day

All elections days, except primary and special election days, in the county wherein the election is held;

Any day designated by proclamation by the President of the United States or by the Governor as a holiday.

B. Observance of Holidays.

1. Employees whose workdays fall on Monday through Friday during the workweek in which a holiday occurs shall observe such holiday as provided below:

| Day Holiday Falls | Day Holiday Observed |
|---|---|
| Saturday | Friday preceding holiday |
| Sunday | Monday following holiday |
| Workday | Workday |

2. Employees whose workdays fall on other than Monday through Friday during the workweek in which a

holiday occurs shall observe such holiday as provided below:

| Day Holiday Falls | Day Holiday Observed |
|---|---|
| Day Off | First workday after the day off |
| Workday | Workday |

[MATERIAL DELETED]

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## APPENDIX "C"

## (PART "3")

## UNIT 3
## AGREEMENT

This Agreement is made this 19th day of April, 1985, by and between the Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO, hereinafter called the Union, and the State of Hawaii, the City and County of Honolulu, the County of Hawaii, the County of Maui, and the County of Kauai, hereinafter called the Employer.

### ARTICLE 1 - RECOGNITION

A. The Employer recognizes the Union as the exclusive bargaining agent of the unit certified by the Hawaii Public Employment Relations Board consisting of white-collar non-supervisory Employees employed by the State of Hawaii, the City and County of Honolulu, the County of Hawaii, the County of Maui, and the County of Kauai.

B. The term "Employee" as used in this agreement refers to Employees in the bargaining unit.

C. Wherever in this Agreement the masculine gender is used, it shall be deemed to include the feminine gender.

[MATERIAL DELETED]

### ARTICLE 32 - HOLIDAYS

A. Legal holidays shall be as provided under Section 8-1, HRS, as amended. Such holidays are:

New Year's Day
President's Day
Prince Jonah Kuhio Kalanianacle Day
Good Friday
Memorial Day
King Kamehameha I Day
Independence Day
Admission Day
Labor Day
Discoverers' Day
Veterans' Day
Thanksgiving Day
Christmas Day

All election days, except primary and special election days, in the county wherein the election is held.

Any day designated by proclamation by the President of the United States or by the Governor as a holiday.

B. Observance of Holidays.

1. Employees whose workdays fall on Monday through Friday during the workweek in which a holiday occurs shall observe such holiday as provided below:

| Day Holiday Falls | Day Holiday Observed |
|---|---|
| Saturday | Friday preceding holiday |
| Sunday | Monday following holiday |
| Workday | Workday |

2. Employees whose workdays fall on other than Monday through Friday during the workweek in which a

holiday occurs shall observe such holiday as provided below:

| Day Holiday Falls | Day Holiday Observed |
|---|---|
| Day off | First workday after the day off |
| Workday | Workday |

[MATERIAL DELETED]

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## APPENDIX "C"
## (PART "4")

### UNIT 4
### AGREEMENT

This Agreement is made this 19th day of April, 1985, by and between the Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO, hereinafter called the Union, and the State of Hawaii, the City and County of Honolulu, the County of Hawaii, the County of Maui, and the County of Kauai, hereinafter called the Employer.

### ARTICLE 1 - RECOGNITION

A. The Employer recognizes the Union as the exclusive bargaining agent of the unit certified by the Hawaii Public Employment Relations Board consisting of white-collar supervisory Employees employed by the State of Hawaii, the City and County of Honolulu, the County of Hawaii, the County of Maui, and the County of Kauai.

B. The term "Employee" as used in this Agreement refers to Employees in the bargaining unit.

C. Wherever in this Agreement the masculine gender is used, it shall be deemed to include the feminine gender.

[MATERIAL DELETED]

### ARTICLE 32 - HOLIDAYS

A. Legal holidays shall be as provided under Section 8-1, HRS, as amended. Such holidays are:

New Year's Day
Presidents' Day
Prince Jonah Kuhio Kalanianaole Day
Good Friday
Memorial Day
King Kamehameha I Day
Independence Day
Admission Day
Labor Day
Discoverers' Day
Veterans' Day
Thanksgiving Day
Christmas Day

All election days, except primary and special election days, in the county wherein the election is held;

Any day designated by proclamation by the President of the United States or by the Governor as a holiday.

B. Observance of Holidays.

1. Employees whose workdays fall on Monday through Friday during the workweek in which a holiday occurs shall observe such holiday as provided below:

| Day Holiday Falls | Day Holiday Observed |
|---|---|
| Saturday | Friday preceding holiday |
| Sunday | Monday following holiday |
| Workday | Workday |

2. Employees whose workdays fall on other than Monday through Friday during the workweek in which a

holiday occurs shall observe such holiday as provided below:

| Day Holiday Falls | Day Holiday Observed |
|---|---|
| Day Off | First workday after the day off |
| Workday | Workday |

[MATERIAL DELETED]

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# APPENDIX "C"
# (PART "5")

## AGREEMENT
BETWEEN

## STATE OF HAWAII
## BOARD OF EDUCATION

AND

## HAWAII STATE
## TEACHERS ASSOCIATION

**July 1, 1985-June 30, 1987**

### ARTICLE 1 – RECOGNITION

This Agreement entered into this 1st day of July, 1985 by and between the State of Hawaii, Board of Education, hereinafter called the "Employer" as defined in Section 89-2(9). Hawaii Revised Statutes, and the Hawaii State Teachers Association, hereinafter called the "Association."

Pursuant to certification by the Hawaii Public Employment Relations Board in Case Number 1, the Employer recognizes the Association for the purposes of collective bargaining pursuant to the Hawaii Public Employment Act, as the exclusive representative of a unit consisting of teachers and other personnel of the Department of Education under the same salary schedule, pursuant to Section 297-33(d). Hawaii Revised Statutes.

EXCLUDING: Part-time teachers (less than 20 hours per week). Substitute Teachers, Adult Education Teachers except those on annual contract, Summer School Teachers, Summer School Supportive Staff (Counselors, Librarians, etc.); Special Contract Teachers (Consultants,

Special Projects, Workshop Teachers, etc.); ROTC Instructors, Driver Training and Educational Instructors, Model Cities Teachers, PL 89-10 Title 1 (not on regular teachers' salary schedule); Language Arts Lay Readers; Non-Teacher Athletic Coaches; Home/Hospital Instruction Teachers (Hourly or part-time less than 20 hours per week); Non-Teachers, Non-Athletic Activities Supervisors; Part-time Advisors, PL 89-10 Title 1 (Drop Out Program); Civil Defense Teachers; National Teachers Corps Interns; Student Teachers; Vocational Home Economics Teachers (Part-time less than 20 hours per week); Vocational Agriculture Teachers (Part-time less than 20 hours per week).

It is understood that references to male teachers shall include female teachers.

[MATERIAL DELETED]

## ARTICLE XVI – WORK YEAR

The work year for bargaining unit members shall be as previously established and shall be no more than one hundred eighty (180) days: one (1) day of which shall be without students at the beginning of the school year and one (1) day of which shall be without students at the end of the school year.

Bargaining unit personnel shall have one day set aside for Teacher Institute Day.

The Employer shall not schedule nor require work to be performed on any of the following holidays:

1 Labor Day
2 Discovers' Day
3 Veterans' Day
4 General Election day
5 Thanksgiving Day
6 Day after Thanksgiving
7 Christmas Day
8 New Year's Day
9 Presidents Day
10 Kuhio Day
11 Good Friday
12 Memorial Day
13 Kamehameha Day

Vacations for bargaining unit personnel shall be the day after Thanksgiving, two (2) weeks at Christmas, one (1) week in the Spring.

The work year for bargaining unit members shall not extend beyond Kamehameha Day.

Employees are not required to report to work during the winter or spring vacations or during the period beginning with the ending of the teaching year in June and ending with the beginning of the new teaching year in September of the following school; however,

1. Employees may voluntarily report to duty without compensation; or

2. Employees who are officially recalled to duty by the Employer according to established procedures and who agree to perform work shall be compensated at the rate of 1/180 times (x) his/her annual salary for each day worked. Provided, however, that librarians and registrars shall be provided extra compensation for such work only when it exceeds the work obligation for which they receive a pay differential.

[MATERIAL DELETED]

## APPENDIX "C"
## (PART "6")

### UNIT 6
### AGREEMENT

This Agreement is made this 19th day of April, 1985, by and between the Hawaii Government Employees' Association, AFSCME Local 152, AFL-CIO, hereinafter called the Union and the State of Hawaii, Board of Education including the Department of Education, hereinafter called the Board.

### ARTICLE 1 - RECOGNITION

The Board recognizes the Union as the exclusive bargaining agent of a unit consisting of all educational officers employed by the Board as certified by the Hawaii Public Employment Relations Board pursuant to Chapter 89, Hawaii Revised Statutes.

### ARTICLE 2 - CONFLICT

If there is any conflict between the provisions of this Agreement and any of the rules and regulations of the Board, other personnel regulations applicable to educational officers, or any contracts between the Board and educational officers, the terms of this Agreement shall prevail.

[MATERIAL DELETED]

### ARTICLE 3 - MAINTENANCE OF RIGHTS AND PRIVILEGES

A. Except as modified herein, educational officers shall retain all rights, benefits, and privileges pertaining to their conditions of employment contained in the School Code at the time of the execution of this Agreement.

B. Subject to the foregoing paragraph, nothing contained herein shall be interpreted as interfering with the Board's right to make, amend, revise, or delete any portion of the School Code; provided, however, that the Union shall be consulted on any changes to be made.

## APPENDIX "C"
## (PART "7")

### AGREEMENT

This Agreement is made this 19th day of April 1985 by and between the State of Hawaii and the Board of Regents of the University of Hawaii, hereinafter called the Employer or Public Employer, as defined in Section 89-2, H.R.S., and the University of Hawaii Professional Assembly, hereinafter called the Union.

### ARTICLE I, RECOGNITION

The Employer recognizes the Union as the exclusive representative of Collective Bargaining Unit 7, as certified by the Hawaii Public Employment Relations Board. The public employees composing the unit are hereinafter referred to as Faculty Members or Faculty.

[MATERIAL DELETED]

F. HOLIDAYS

1. Legal holidays shall be observed as provided under Section 8-1, H.R.S., as amended. Such holidays are:

   New Year's Day .....First day of January
   Presidents' Day.....Third Monday in February
   Kuhio Day .....Twenty-sixth day of March
   Good Friday ...Friday preceding Easter Sunday
   Memorial Day .....Last Monday in May
   Kamehameha Day.....Eleventh day of June
   Independence Day.....Fourth day of July
   Admission Day .....Third Friday in August
   Labor Day .....First Monday in September

Discoverers' Day....Second Monday in October
Veterans' Day .....Eleventh day of November
Thanksgiving Day Fourth Thursday in November
Christmas Day ...Twenty-fifth day of December

All election days, except primary and special election days, in the county wherein the election is held.

Any day designated by proclamation by the President of the United States or by the Governor as a holiday.

2. If any of the State's legal holidays falls on Sunday, the following Monday shall be observed as a holiday. If such a day falls on a Saturday, the preceding Friday shall be observed as a holiday.

3. Holidays shall be credited toward the accrual of vacation and sick leave.

[MATERIAL DELETED]

## APPENDIX "C"

## (PART "8")

## UNIT 09
## AGREEMENT

This Agreement is made this 19th day of April, 1985, by and between the Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO, hereinafter called the Union, and the State of Hawaii, the City and County of Honolulu, the County of Hawaii, the County of Maui, and the County of Kauai, hereinafter called the Employer.

### ARTICLE 1 – RECOGNITION

A. The Employer recognizes the Union as the exclusive bargaining agent of the unit certified by the Hawaii Public Employment Relations Board consisting of Registered Professional Nurses employed by the State of Hawaii, the City and County of Honolulu, the County of Hawaii, the County of Maui, and the County of Kauai.

B. The term "Employee" as used in this Agreement refers to Employees in the bargaining unit.

C. Whenever in this Agreement the feminine gender is used, it shall be deemed to include the masculine gender.

[MATERIAL DELETED]

### ARTICLE 40 – HOLIDAYS

A. Legal holidays shall be as provided under Section 8-1, HRS, as amended. Such holidays are:

New Year's Day
Presidents' Day
Prince Jonah Kuhio Kalanianaole Day
Good Friday
Memorial Day
King Kamehameha I Day
Independence Day
Admission Day
Labor Day
Discoverers' Day
Veterans' Day
Thanksgiving Day
Christmas Day

All election days, except primary and special election days, in the county wherein the election is held;

Any day designated by proclamation by the President of the United States or by the Governor as a holiday.

B. Observance of Holidays

1. Employees whose workdays fall on Monday through Friday during the work week in which a holiday occurs shall observe such holiday as provided below:

| Day Holiday Falls | Day Holiday Observed |
|---|---|
| Saturday | Friday preceding holiday |
| Sunday | Monday following holiday |
| Workday | Workday |

2. Employees whose workdays fall on other than Monday through Friday during the work week in which a holiday occurs shall observe such holiday as provided below:

| Day Holiday Falls | Day Holiday Observed |
|---|---|
| Day Off | First workday after the |
| Workday | day off Workday |

[MATERIAL DELETED]

# APPENDIX "C"
# (PART "9")

## UNIT 10

## AGREEMENT

**Between**
**STATE OF HAWAII**
**CITY & COUNTY OF HONOLULU**
**COUNTY OF HAWAII**
**COUNTY OF MAUI**
**COUNTY OF KAUAI**

**and**

**UNITED PUBLIC WORKERS**
**LOCAL, 646**
**AMERICAN FEDERATION OF**
**STATE, COUNTY & MUNICIPAL EMPLOYEES,**
**AFL-CIO**

**BLUE COLLAR NON-SUPERVISORY**
**BARGAINING UNIT**

**JULY 1, 1985 - JUNE 30, 1987**

THIS AGREEMENT is entered into this 29th day of March, 1985 by and between the STATE OF HAWAII, the CITY AND COUNTY OF HONOLULU, the COUNTY OF HAWAII, the COUNTY OF MAUI, AND THE COUNTY OF KAUAI, hereinafter collectively called the EMPLOYER, and the UNITED PUBLIC WORKERS, LOCAL 646, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, hereinafter called the UNION.

Section 1. RECOGNITION.

1.01 The Employer recognizes the Union as the exclusive bargaining representative for those public employees in the nonprofessional hospital and institutional workers' unit, non-supervisory and supervisory.

This unit consists of employees in such areas as health care, corrections, and emergency medical services employed at hospitals, correctional facilities, detention facilities, emergency medical service units, mental health clinics, and community health clinics.

[MATERIAL DELETED]

Section 35. HOLIDAYS.

35.01 Legal holidays shall be as provided under Section 8-1, Hawaii Revised Statutes, as amended. Such holidays are:

| | |
|---|---|
| New Year's Day | – First day of January |
| Presidents' Day | – Third Monday in February |
| Prince Jonah Kuhio Kalanianaole Day | – Twenty-sixth day of March |
| Good Friday | – Friday preceding Easter Sunday |
| Memorial Day | – Last Monday in May |
| King Kamehameha I Day | – Eleventh day of June |
| Independence Day | – Fourth day of July |
| Admission Day | – Third Friday in August |
| Labor Day | – First Monday in September |

| | |
|---|---|
| Discoverers' Day | – Second Monday in October |
| Veterans' Day | – Eleventh Day of November |
| Thanksgiving Day | – Fourth Thursday in November |
| Christmas Day | – Twenty-fifth day of December |

All election days, except primary and special election days, in the county wherein the election is held.

Any day designated by proclamation by the President of the United States or by the Governor as a holiday.

35.02 Observance of Holiday.

a. Employees whose workdays fall on Monday through Friday during the workweek in which a holiday occurs shall observe such holiday as provided below:

| Day Holiday Falls | Day Holiday Observed |
|---|---|
| Saturday | Friday preceding Holiday |
| Sunday | Monday following Holiday |
| Workday | Workday |

b. Employees whose workdays fall on other than Monday through Friday during the workweek in which a holiday occurs shall observe such holiday as provided below:

| Day Holiday Falls | Day Holiday Observed |
|---|---|
| Dayoff | First workday after the dayoff |
| Workday | Workday |

35.03 it shall be the desire of the parties to this Agreement that holiday work assignments be shared equitably among employees in a work unit. To accomplish this a rotational system by seniority will be established whereby every employee within an organizational

unit will be given the opportunity to participate in holiday work assignments on an equitable basis insofar as the requirements of the mission will permit and in accordance with skills required. Suitable records must be maintained by supervisors to assure that each employee receives substantially the same consideration.

35.04 Upon request of the Union, the Employer or his representative shall meet and consult with the Union when developing the holiday assignment system.

[MATERIAL DELETED]

**APPENDIX "C"**
**(PART "10")**

**AGREEMENT**

**Hawaii Fire Fighters Association**

**IAFF Local Union No. 1463**

**AGREEMENT**

This agreement is made and entered into this ___ day of ___, 1983, by and between the State of Hawaii, the City and County of Honolulu and the County of Hawaii, the County of Maui and the County of Kauai, hereinafter referred to as the Employer, and the Hawaii Fire Fighters Association. Local 1463, IAFF, AFL-CIO, hereinafter referred to as the Union.

This Agreement covers all employees for whom the Union is recognized as exclusive bargaining representative pursuant to Section 1: Recognition.

It is the purpose of this Agreement to achieve and maintain harmonious and cooperative relations between the Employer and the Union, to provide for equitable and peaceful adjustment of differences which may arise and to establish proper standards of wages, hours, and other terms and conditions of employments.

**Section 1. RECOGNITION.**

The Employer recognizes the Union as the certified exclusive bargaining representative of all firefighters, including supervisory personnel, of the State and its political subdivisions whose principal duties are to prevent and fight fires, except for officers and employees

who are excluded or may be excluded from the bargaining unit by law and the Hawaii Public Employment Relations Board.

The Employer shall provide the Union with a roster of its employees by company or unit assignment and shall maintain its currency. The Union shall provide the Employer with a list of its officers, stewards, and authorized representatives and maintain its currency.

[MATERIAL DELETED]

**Section 24. HOLIDAYS.**

A. Holidays shall be as provided under Section 8-1. HRS as amended. Such holidays are:
   - New Year's Day
   - President's Day
   - Prince Jonah Kuhio Kalanianaole Day
   - Good Friday
   - Memorial Day
   - King Kamehameha Day
   - Independence Day
   - Admission Day
   - Labor Day
   - Thanksgiving Day
   - Christmas Day
   - All election days, except primary and special election days, in the county wherein the election is held.
   - Any day designated by proclamation by the President of the United States or designated by proclamation by the Governor of the State as a holiday.

B. Observance of holidays

(1) Employees whose workdays fall on Monday through Friday during the workweek in which a holiday occurs shall observe such holiday as provided below:

| Day Holiday Falls | Day Holiday Observed |
|---|---|
| Saturday | Friday preceding holiday |
| Sunday | Monday following holiday |
| Workday | Workday |

(2) Employees whose workdays fall on other than Monday through Friday during the workweek in which a holiday occurs shall observe such holiday as provided below:

| Day Holiday Falls | Day Holiday Observed |
|---|---|
| Day off | First workday after the day off |
| Workday | Workday |

(3) Whenever an employee is required to work on his designated holiday he shall be paid, in addition to his straight time pay at the rate of one and one-half (1 1/2) times his hourly rate of pay for all hours worked on the holiday; provided that whenever the major portion of a shift falls on a holiday, the entire shift shall be considered holiday work.

C. The following provisions shall apply in the case of employees assigned to 24-hour shifts, helicopter duty or any work schedule in excess of 40 hours per week:

(1) If a holiday falls on a non-work day, the next scheduled work day following such non-work day shall be held and considered to be a holiday for such employee in lieu of such day which so occurs on such non-work day.

(a) A holiday falls on a work day if the major portion of a scheduled shift falls on the holiday.

(b) A holiday falls on a non-work day if the major portion of a scheduled shift does not fall on the holiday.

(2) Holiday Premium Pay – Subject to the approval of the respective legislative bodies, effective July 1, 1977, whenever an employee performs scheduled work on his designated holiday, he shall be paid in addition to his straight time pay, at the rate of one and one-half (1 1/2) times his hourly rate of pay which shall be based on 40 hours per week for all hours worked on the holiday up to a maximum of eight (8) hours; provided that when overtime work is performed by an employee on his designated holiday, he shall be paid at the appropriate overtime rate for such overtime work.

D. All employees whose work schedule permit shall be entitled to have the holiday or the shift for that holiday off without loss of pay or benefits. For purposes of determining overtime, holidays

not worked as provided herein shall be counted as time worked.

[MATERIAL DELETED]

## APPENDIX "C"
## (PART "11")

### UNIT 13
### AGREEMENT

This Agreement is made this 19th day of April, 1985, by and between the Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO, hereinafter called the Union, and the State of Hawaii, the City and County of Honolulu, the County of Hawaii, the County of Maui, and the County of Kauai, hereinafter called the Employer.

### ARTICLE 1 – RECOGNITION

A. The Employer recognizes the Union as the exclusive bargaining agent of the unit certified by the Hawaii Public Employment Relations Board consisting of professional and scientific employees, other than registered professional nurses employed by the State of Hawaii, the City and County of Honolulu, the County of Hawaii, the County Maui, and the County of Kauai.

B. The term "Employee" as used in this Agreement refers to Employees in the bargaining unit.

C. Whenever in this Agreement the masculine gender is used, it shall be deemed to include the feminine gender.

[MATERIAL DELETED]

## ARTICLE 34 – HOLIDAYS

A. Legal holidays shall be as provided under Section 8-1, HRS, as amended. For informational purposes, such holidays are:

New Year's Day, the first day of January
President's Day, the third Monday in February
Prince Jonah Kuhio Kalanianaole Day, the twenty-sixth day of March
Good Friday, the Friday preceding Easter Sunday
Memorial Day, the last Monday in May
King Kamehameha I Day, the eleventh day of June
Independence Day, the fourth day of July
Admission Day, the third Friday in August
Labor Day, the first Monday in September
Discoverers' Day, the second Monday in October
Veterans' Day, the eleventh day in November
Thanksgiving Day, the fourth Thursday in November
Christmas Day, the twenty-fifth day of December

All election days, except primary and special election days, in the county wherein the election is held.

Any day designated by proclamation by the President of the United States or by the Governor as a holiday.

B. Observance of Holidays.

1. Employees whose workdays fall on Monday through Friday during the workweek in which a holiday occurs shall observe such holiday as provided below:

| Day Holiday Falls | Day Holiday Observed |
|---|---|
| Saturday | Friday preceding holiday |
| Sunday | Monday following holiday |
| Workday | Workday |

2. Employees whose workdays fall on other than Monday through Friday during the workweek in which a holiday occurs shall observe such holiday as provided below:

| Day Holiday Falls | Day Holiday Observed |
|---|---|
| Day off | First workday after the day off |
| Workday | Workday |

[MATERIAL DELETED]

## APPENDIX "D"

Hawaii Revised Statutes § 1-29 (1985) provides in relevant part that

> *§ 1-29 Computation of Time.* The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a Sunday or holiday and then it is also excluded.

Hawaii Revised Statutes § 80-1 (1985) provides that

> *§ 80-1 Office hours.* Offices of the State and counties and independent boards and commissions thereof shall open for the transaction of public business between the hours of 7:45 a.m. and 4:30 p.m., Monday to Friday, inclusive. By executive order, the governor may modify the hours of business offices, other agencies and schools in order to meet a demonstrated need for public services, to provide for the efficient operation of business, to encourage energy conservation, and to reduce traffic congestion. Offices shall be closed on Saturday, except those which public convenience require shall remain open from 8 a.m. to noon on Saturday. Offices open on Saturday may be staffed with a skeleton force. A lunch period of forty-five minutes will be allowed all governmental personnel, which shall not constitute working time under this section.

Haw. Rev. Stat. § 89-9 (1985 and Supp. 1991) provides that

> **§ 89-9 Scope of negotiations.** (a) The employer and the exclusive representative shall meet at reasonable times, including meetings in

advance of the employer's budget-making process, and shall negotiate in good faith with respect to wages, hours, the number of incremental and longevity steps and movement between steps within the salary rage, the amounts of contributions by the State and respective counties to the Hawaii public employees health fund to the extent allowed in subsection (e), and other terms and conditions of employment which are subject to negotiations under this chapter and which are to be embodied in a written agreement, or any question arising thereunder, but such obligation does not compel either party to agree to a proposal or make a concession.

(b) The employer or the exclusive representative desiring to initiate negotiations shall notify the other in writing, setting forth the time and place of the meeting desired and generally the nature of the business to be discussed, and shall mail the notice by certified mail to the last known address of the other party sufficiently in advance of the meeting.

(c) Except as otherwise provided herein, all matters affecting employee relations, including those that are, or may be, the subject of a regulation promulgated by the employer or any personnel director, are subject to consultation with the exclusive representatives prior to effecting changes in any major policy affecting employee relations.

(d) Excluded from the subjects of negotiations are matters of classification and reclassification, benefits of but not contributions to the Hawaii public employees health fund, retirement benefits, and the salary ranges now

provided by law; provided that the number of incremental and longevity steps, the amount of wages to be paid in each range and step, and movement between steps, within the salary range shall be negotiable. The employer and the exclusive representative shall not agree to any proposal which would be inconsistent with merit principles or the principle of equal pay for equal work pursuant to sections 76-1, 76-2, 77-31, and 77-33, or which would interfere with the rights of a public employer to (1) direct employees; (2) determine qualification, standards for work, the nature and contents of examinations, hire, promote, transfer, assign, and retain employees in positions and suspend, demote, discharge, or take other disciplinary action against employees for proper cause; (3) relieve an employee from duties because of lack of work or other legitimate reason; (4) maintain efficiency of government operations; (5) determine methods, means, and personnel by which the employer's operations are to be conducted; and take such actions as may be necessary to carry out the missions of the employer in cases of emergencies; provided that the employer and the exclusive representative may negotiate procedures governing the promotion and transfer of employees to positions within a bargaining unit, procedures governing the suspension, demotion, discharge or other disciplinary actions taken against employees, and procedures governing the lay off of employees; provided further that violations of the procedures so negotiated may be the subject of a grievance process agreed to by the employer and the exclusive representative.

(e) Negotiations relating to contributions to the Hawaii public employees health fund shall be for the purpose of agreeing upon the amounts which the State and counties shall contribute under section 87-4, toward the payment of the costs for a health benefits plan, as defined in section 87-1(8), and group life insurance benefits, and the parties shall not be bound by the amounts contributed under prior agreements; provided that section 89-11 for the resolution of disputes by way of fact finding or arbitration shall not be available to resolve impasses or disputes relating to the amounts the State and counties shall contribute to the Hawaii public employees health fund. [am L 1986, c 156, § 1; am L 1987, c 27, § 4; am L 1988, c 399, § 4]